IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Gayatri Parivar Trust & Others Vs. State of Rajasthan & Others
(D.B. Civil Writ Petition No.563/2002)

D. B. Civil writ Petition under Articles 226 and 227 of the Constitution of India.

Date of Judgment: August 29, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE GUMAN SINGH

Mr. G.S.Bapna] for the petitioners.
Mr. N.R.Saran]

Mr. M.S.Raghav, Addl. Advocate General for the State.
Mr. B.N.Sandhu, Addl. Govt. Advocate.

Mr. Kamlakar Sharma] for respondent.
Mr. Paras Kuhad]
Mr. Rakesh Chandel]
Ms. Gayatri Rathore, for respondent No.6.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

The prayer of the petitioners in the instant writ petition is as under:-

(i) By a suitable writ, order or direction the Proprietors of Cigarette Companies as well as 4 News Papers may be prosecuted under section 11 for offence under section 7 and be suitably punished.

(ii) by suitable writ, order or direction all the news papers which

are circulated in Rajasthan may be restrained from publishing any advertisement which has effect of promoting smoking.

(iii) by suitable writ, order or direction exemplary cost may be awarded against the manufacturers of cigarettes and beedies and the news papers and the amount may be paid to the Institutions which are carrying on the activities for restoring health of the smokers and addicts.

(iv) Any other order or direction which this Hon'ble Court may deem just, appropriate and expedient in the facts and circumstances of the case may also kindly be passed.

2. Petitioners are social organizations of repute and are working for the welfare of the citizens at large. These organizations are working for eradication of intoxicating activities and publishing literature, holding camp, displays slide shows and campaigning for eradication of this evil. Smoking of Tobacco in the form of cigarettes, Cigars, Beedies or otherwise has been age-old evil and in recent time it was detected that not only the person who smokes but even the passive smoker had to suffer harmful effects of tobacco. Recently the State Legislature has enacted the Rajasthan Prohibition of Smoking and Non smokers' Health Protection Act,2000 w.e.f. May 11, 2000 (for short `2000 Act'). Section 2(a) of 2000 Act defines advertisement and section 7 prohibits advertisement of cigarettes and beedies etc., which reads as under:-

> “7. Prohibition of Advertisement of Cigarettes etc. Notwithstanding anything contained in any other law for the time being in force, no person shall advertise in any place and any public service vehicle which may promote smoking or the sale of cigarettes and beedies etc.”

3. Having heard the submissions and on scanning the material on record we find that at the time of filing instant writ petition the Prohibition of Cigarettes (Manufacture, Sale and Distribution and Control of Advertisement) Act,1975 (for short `1975 Act') was in force. Section 5 of the 1975 Act reads as under:-

> "5. Restrictions on advertisement of cigarettes.- (1) No person shall advertise for the distribution, sale or supply of cigarettes, and no person shall take part in the publication of any such advertisement, unless the specific warning is included in such advertisement.
> (2) Every specified warning included in an advertisement shall be conspicuous, legible and prominent.
> (3) No person shall, whether directly or indirectly, import, for the purpose of carrying on any trade or commerce in cigarette, any document, article or thing, containing any advertisement which violates the provisions contained in sub-section (1) or sub-section (2)."

Evidently advertisement for the distribution, sale or supply of cigarettes could be published with the specified warning and the 1975 Act escape notice of the petitioners.

4. Since there is inconsistency between the laws made by Parliament and laws made by Legislature of State. The law made by the Parliament shall prevail and the law made by State Legislature to the extent of repugnance shall be void as mandated by Article 254(1) of the Constitution, which reads as under:-

> "Art.254.(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any

> provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or as the case may be, the existing law, shall prevail and the law made be the Legislature of the State, shall, to the extent of repugnancy, be void."

5. The power of enactment under Entry 52 has been exercised in the form of Industries (Development and Regulation) Act, 1951. Item 38(1) of the Schedule to IDR Act reads as `cigarettes'. It reads tobacco products as `cigarettes'. Thus, any legislation in respect of cigarettes can be undertaken only by the Central Legislation. The State Legislation which is substance seek to address any issue arising out of consumption of cigarettes cannot be enacted by the State Legislature. Another legislation that was enacted by the Parliament in terms of Entry 52 is Tobacco Products Act,1975. The preamble of this Act states under section 2 that the Act of 1975 is a legislative exercise undertaken in reference of Entry 52 of List I of the Constitution. The products sought to be covered by the said Act is cigarettes. Thus, a comprehensive legislation covering all aspects of cigarettes stands enacted by the Parliament. In exercise of the same power, the Parliament enacted the Prohibition of Cigarettes (Manufacture, Sale and Distribution and Control of Advertisement) Act, 1975. Under this Act, the Parliament specifically examined the extent to which advertisement of cigarettes is to be prohibited/ restrained or controlled. The restriction that is contained thereunder in respect of advertisement is in the form of obligations cast upon the purchaser and that of inserting a stipulation that `smoking is injurious to health'. The Parliament thus addressed the problem of advertisement of tobacco products and had in its wisdom having legislated about the extent to which restrictions are to be imposed upon exercising of company's right to

advertise the cigarettes, the State Legislature was not empowered to undertaking the legislative exercise in this respect.

6. We also notice that during pendency of writ petition the Cigarettes and Other Tobacco Products (Prohibition Advertisements and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (for short `2003 Act') has been enacted and which came into force w.e.f. February 11, 2007. The petitioners, for the relief sought, may now invoke the provisions as contained in 2003 Act.

7. For these reasons, we dispose of instant writ petition as under:-

(i) No relief as sought in the writ petition can be granted to petitioners in view of the provisions contained in 1975 Act.
(ii) The petitioners shall be at liberty to approach the competent authority in view of the provisions contained in 2003 Act.
(iii) There shall be no order as to costs.

(Guman Singh),J. (Shiv Kumar Sharma)J.

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